

**PT 04-6**

**Tax Type: Property Tax**

**Issue: Government Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**DU PAGE MAYORS  
AND MANAGERS CONFERENCE  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 02-PT-0007  
(01-22-0148)  
P.I.N: 06-26-301-098**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. William M. McGuffage, of the Law Offices of William F. Dart, Ltd., on behalf of the DuPage Mayors and Managers Conference (the “Applicant” or the “Conference”); Mr. Robert Rybica, Assistant State’s Attorney for the County of DuPage, on behalf of the DuPage County Board of Review (the “Board”); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).<sup>1</sup>

**SYNOPSIS:** This matter raises the limited issue of whether real estate identified by DuPage County Parcel Index Number 06-26-301-098 (the “subject property”) was “used exclusively for municipal or public purposes,” as required by 35 ILCS 200/15-60, at any point during the 2001 assessment year. The underlying controversy arises as follows:

The Conference filed a Petition for Property Tax Exemption with the Board, which recommended that the subject property be exempt as of July 16, 2001. The Department, however, rejected the Board’s recommendation via a determination, dated

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1. The Conference, the Board and the Department shall hereinafter collectively be referred to as the “parties.”

December 28, 2001, finding that the subject property is not in exempt ownership and not in exempt use. Applicant filed a timely appeal to this initial denial and later filed a motion for summary judgment, to which the Board and Department filed a joint cross motion for summary judgment and the applicant filed a reply.

On April 22, 2003, I issued a “Recommendation for Disposition Pursuant to Cross Motions for Summary Judgment,” which: (a) granted partial summary judgment in favor of the Conference, and against the Board and Department, on the issue of whether the subject property was “owned by any municipality,” as required by 35 ILCS 200/15-60 during that 46% of the 2001 assessment year wherein applicant held its ownership interest in the subject property; but, (b) denied both of the cross motions for summary judgment on the issue of exempt use on grounds that there existed a genuine issue of material fact as to whether the subject property was “used “exclusively for municipal purposes,” as also required by 35 ILCS 200/15-60 during the 46% of the 2001 assessment year that is currently at issue.

Applicant later presented evidence on the issue of exempt use at a formal hearing, at which the Department and the Board also appeared. Following a careful review of the record made at hearing, I recommend that the Department’s initial determination in this matter be modified to reflect that the subject property be exempt from real estate taxation, but only for 4% of the 2001 assessment year.

**SUPPLEMENTAL FINDINGS OF FACT:<sup>2</sup>**

1. The subject property is located in Oak Brook, Illinois and improved with a one story office building. Dept. Ex. No. 1.
2. The Conference's governing board held a series of regular business meetings between January 4, 2001 and August 1, 2002. Applicant Hearing Group Ex. No. 3, Documents A through F; Applicant Hearing Group Ex. No. 7, Documents A and B.
3. Minutes from these meetings reflect that the dates of these meetings were January 4, 2001, April 15, 2001, July 12, 2001, July 19, 2001, September 6, 2001, November 1, 2001, March 7, 2002 and August 1, 2002. *Id.*
4. The minutes further reflect that: (a) the Conference held the January 4, 2001, April 5, 2001, July 12, 2001 and July 19, 2001 meetings at the subject property; but, (b) the Conference held the September 6, 2001, November 1, 2001, March 7, 2002 and August 1, 2002 meetings at the Addison Village Hall. *Id.*
5. According to the minutes, the Conference's governing board discussed its plan to develop the subject property for use as its main office headquarters at all of these meetings. *Id.*

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2. In the interest of brevity, and to the extent relevant, the Findings of Fact and Conclusions of Law contained in the "Recommendation for Disposition Pursuant to Cross Motions for Summary Judgment," a true and correct copy of which is attached hereto and fully incorporated by reference herein, are hereby adopted as Findings of Fact and Conclusions of Law for purposes of this Recommendation. Therefore, any new or additional Findings or Conclusions drawn from the evidence adduced at hearing shall be referred to as "Supplemental Findings of Fact" or "Supplemental Conclusions of Law," as the case may be.

6. The Conference's plan for that proposed development actually proceeded as follows:

DATE	ACTION
November 15, 2000	<ul style="list-style-type: none"><li>• The Conference submits applications for zoning approvals to the municipal authorities in the Village of Village of Oak Brook.</li></ul>
March 27, 2001	<ul style="list-style-type: none"><li>• The Municipal authorities in the Village of Oak Brook give final approval to the Conference's applications for zoning approvals.</li></ul>
July 16, 2001	<ul style="list-style-type: none"><li>• Applicant takes title to the subject property.</li></ul>
July 19, 2001	<ul style="list-style-type: none"><li>• Minutes reflect that applicant holds \$1.5 million in escrow for the purchase and expansion of the subject property;</li><li>• Minutes further reflect that: (a) the estimated project cost is \$892,413.00; and, (b) construction is scheduled to begin in mid-September and run through April of 2002.</li></ul>
September 6, 2001	<ul style="list-style-type: none"><li>• The Conference opens construction bids.</li></ul>
September 11, 2001	<ul style="list-style-type: none"><li>• The Conference holds contractor interviews.</li></ul>
October 19, 2001	<ul style="list-style-type: none"><li>• Applicant's executive director executes a contract for construction of the subject property. This contract anticipates that construction will begin in mid-November, 2001.</li></ul>

*Id.*

7. Applicant could not actually begin construction until December 19, 2001 because the Village of Oak Brook (the "Village") did not issue the Conference a building permit for construction of the subject property until that date. Applicant Hearing Ex. No. 5.
8. The Village issued applicant a Certificate of Occupancy for the subject property on March 4, 2003. Applicant Hearing Ex. No. 8.

**SUPPLEMENTAL CONCLUSIONS OF LAW:**

The "Recommendation for Disposition Pursuant to Cross Motions for Summary Judgment" concluded, in relevant part, that there existed a genuine issue of material fact as to whether the subject property was "used exclusively<sup>[3]</sup> for municipal or public purposes," as required by Section 15-60 of the Property Tax Code,<sup>4</sup> 35 ILCS 200/1-1 *et seq.*, at any point of the 46% of the 2001 assessment year that is currently at issue. That conclusion was based, in large part, on the applicant's failure to submit any evidence proving how the Conference, itself, actually used the subject property during that 46%. "Recommendation for Disposition Pursuant to Cross Motions for Summary Judgment," p. 11. Thus, while the evidence presented on summary judgment did establish that applicant intended to develop the subject property for use as its headquarters during that 46%, the record from that proceeding disclosed little, if any, information pertaining to the means that applicant actually employed to accomplish that goal.

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3. The word "exclusively," when used in Section 200/15-60 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

4. Section 15-60 of the Property Tax Code state, in relevant part that:

All property owned by any municipality outside of its corporate limits is exempt [from real estate taxation] if used exclusively for municipal or public purposes.

35 ILCS 200/15-60.

This failure of proof proved fatal on summary judgment because it is applicant's actual, and not intended, use that is decisive for present purposes. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Therefore, the present inquiry must focus on whether, or to what extent, the Conference actually used the subject property for "municipal" purposes during the period under review.

It is well established that office buildings, such as the subject property, can be held tax exempt if the use to which they are put is "reasonably necessary" to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4<sup>th</sup> Dist. 1992); Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). The use of the subject property as the applicant's administrative headquarters might satisfy this standard if it were the primary one to which the property was actually put during the period under review. This, however, was not the case because the applicant vacated the subject property and temporarily relocated its operations to another venue sometime after July 19, 2001.

The Conference, which had been using the subject property as its headquarters prior to July 19, 2001 took these actions ostensibly because it could not use the subject property while it was being renovated. Thus, applicant's use of the subject property could be viewed as "interrupted" throughout the period when the renovations were being made. At the same time, however, it was legally impossible for the Conference to actually make any renovations until the Village of Oak Brook issued a building permit authorizing the commencement thereof on December 19, 2001.

Public policy dictates that an administrative agency cannot fail to recognize or decline to enforce the otherwise valid legal constraints that govern all of the endeavors that applicant must undertake throughout the development process. Furthermore, the two Illinois cases that have allowed exemptions for interrupted use, Our Savior Lutheran Church v. Department of Revenue, 204 Ill. App.3d 1055 (5<sup>th</sup> Dist. 1990) and Mount Calvary Baptist Church v. Zehnder, 302 Ill. App.3d 661 (1<sup>st</sup> Dist. 1998) are distinguishable from the present case.

The applicants in both Our Savior and Mount Calvary were religious institutions who owned the properties at issue before, during and after their respective uses were interrupted.<sup>5</sup> This however, was not true herein because the subject property was owned by one entity, the Village of Oak Brook, prior to the interruption, and owned by another entity, the applicant-Conference, after the interruption occurred. Such a change in ownership may seem trivial at first glance. Nonetheless, the following analysis demonstrates that it forms the basis of some very crucial distinctions.

The properties at issue in Our Savior and Mount Calvary were and remained exempt under the terms of statutes providing for the exemption of properties “used exclusively for religious purposes.”<sup>6</sup> Because the applicants’ ownership interests in these properties remained unchanged before, during and after the interruption occurred, these

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5. The interruption in Our Savior was caused by the retirement of the church’s pastor; the interruption in Mount Calvary was brought about by a fire that caused severe structural damage to the buildings in question. Our Savior, *supra* at 1057; Mount Calvary, *supra* at 663.

6. The religious use provisions at issue in Our Savior were found at Ill. Rev. Stat., 1985, ch. 120, ¶500.2; those at issue in Mount Calvary were found at Ill. Rev. Stat., 1991, ch. 120, ch. 120, ¶500.2. Both of these provisions have now been codified in Section 15-40 of the Property Tax Code which, in relevant part, provides for the exemption of “[a]ll property used exclusively for religious purposes...[.]” 35 ILCS 200/15-40.

properties continued to be exempt under those same exemption provisions even though their use had changed.

Here, however, the entity that owned the subject property prior to the change in ownership, the Village of Oak Brook, maintained the exempt status of that property pursuant to Section 15-60(c) of the Property Tax Code. Section 15-60(c) creates an exemption that is based solely on ownership by providing, in relevant part, for the exemption of “all property *owned* by any city or village located within its incorporated limits.” (emphasis added). 35 ILCS 200/15-60(c). Because the sole basis for this exemption is ownership, the subject property maintained its exempt status so long as the Village remained the sole owner thereof.

The Village surrendered that interest when it transferred ownership of the subject property to the Conference on July 16, 2001. Thus, the subject property lost its exempt status only because the Village, which was entitled to claim the Section 15-60(c) exemption on property that it owned, transferred the subject property to an entity that was not entitled to claim that specific exemption, the Conference. Therefore, unlike Our Savior and Mount Calvary, the subject property did not lose its exempt status strictly because of an incidental interruption in a pre-existing exempt use. *See, Our Savior, supra* at 1060; Mount Calvary, supra at 670.

The change in ownership necessitated that the subject property be qualified for exemption under a different provision of the Property Tax Code. That provision, contained in the last paragraph of Section 15-60, states that “[a]ll property owned by any city or village outside of its corporate limits is exempt if used exclusively for municipal or public purposes.” 35 ILCS 200/15-60.



The Conference's status as a consortium of cities and villages qualifies it as an exempt owner for purposes of this provision.<sup>7</sup> However, this provision also contains an exempt use requirement that is not present in Section 15-60(c). Consequently, unlike Section 15-60(c), the Conference's ownership interest in the subject property, standing alone, does not constitute adequate legal grounds for exempting the subject property from real estate taxation under the last paragraph of Section 15-60. Therefore, the Conference must make an appropriate showing of exempt use in order to obtain that exemption.

The active adaptation and development of real estate for exempt purposes can constitute exempt use in some circumstances. *Compare, Antioch Missionary Baptist Church v. Rosewell*, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt) *with People ex rel. Pearsall v. Catholic Bishop of Chicago* 311 Ill. 11 (1924) (all portions of seminary property being actively developed for seminary-related purposes, except one tract that was totally undeveloped throughout relevant tax year, held exempt); *Weslin Properties v. Department of Revenue*, 157 Ill. App. 3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt). However, applicant must move beyond the initial planning phases, such as discussing the project at its regular business meetings, and into the active development phase, in order to place the subject property in the required exempt use. *Weslin Properties, supra*; *People ex rel. Pearsall v. Catholic Bishop of Chicago, supra*.

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7. I analyzed the Conference's status as an exempt owner for purposes of this provision in the "Recommendation for Disposition Pursuant to Cross Motions for Summary Judgment." In the interest of brevity, that entire analysis is incorporated by reference into the current section of this Recommendation.

In analyzing whether or to what extent this applicant engaged in an appropriate level of exempt use, I am required to evaluate the efforts that applicant made to develop the subject property during 2001 in light of the realities of modern construction and applicant's ultimate intended use. Weslin Properties v. Department of Revenue, *supra*; Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828, 834 (3<sup>rd</sup> Dist. 2000). Thus, it cannot be denied that making the types of major renovations that were necessary to transform the subject property into applicant's main headquarters is an extremely complicated undertaking. Once again, however, public policy dictates that an administrative agency cannot fail to recognize or decline to enforce the otherwise valid legal constraints that govern all of the endeavors that applicant must undertake throughout the developmental process.

The most relevant of these constraints is the one that rendered it legally impossible for the Conference to engage in any physical adaptation of the subject property without first obtaining a building permit from the Village of Oak Brook. Because the Village's municipal authorities did not issue this permit until December 19, 2001, the Conference could not actually engage in the level of adaptation and development necessary to qualify the subject property for exemption under the holding in Weslin Properties, *supra*, until that date.

Furthermore, the Conference vacated the premises soon after it purchased the subject property on July 16, 2001. Thus, with one incidental exception that occurred within three days after the purchase date, the Conference did not actually use the subject property as its headquarters throughout most of the period under review. For this reason, and in light of the foregoing analysis, I conclude that the Department's initial

determination in this matter should be modified to reflect that the subject property be exempt from real estate taxation, but only for that 4% of the 2001 assessment year<sup>8</sup> that transpired between the date the Village issued the building permit, December 19, 2001 and the last day of the 2001 assessment year, December 31, 2001.

WHEREFORE, for all the above stated reasons, real estate identified by DuPage County Parcel Index Number 06-26-301-098 be exempt from real estate taxation, but only for that 4% of the 2001 assessment year that transpired between December 19 2001 and December 31, 2001.

Date: 2/24/2004

Alan I. Marcus  
Administrative Law Judge

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8. Section 1-155 of the Property Tax Code defines the term “year” for Property Tax Purposes as meaning a calendar year. 35 ILCS 200/1-155.